

**REMARKS**

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1, 4-5, 8, 21 and 23-25, 32-40 are pending in the application. Several claims have been cancelled without prejudice or disclaimer. The remaining claims has been amended, where appropriate, to improve claim language. New claims 32-40 readable on the elected invention/species have been added to provide Applicants with the scope of protection to which they are believed entitled. The added/amended claims find solid support in the original specification and drawings, e.g., FIG.5, 10A-11D, and the corresponding text in the specification, especially paragraph 0092 the last sentence of the *published* application. No new matter has been introduced through the foregoing amendments.

The new rejections are noted. Basically, the Examiner relies on *Fries* (previously applied then withdrawn and now reapplied) for a general diaper arrangement with tape fasteners and elasticized wings. The Examiner then relies on *Jingu* (FIG. 3) for a "non-engaging portion" (20) and an "engaging portion" (29) which appear to allegedly have different engaging forces with the hooks (22). The Examiner finally concludes that the teachings of *Fries* and *Jingu* are combinable to disclose all features of the claimed invention.

Applicants respectfully disagree with the rejections *as formulated*, because region 20 of *Jingu* is not configured to at all contact the hooks 22 in the folded state shown in FIG. 1 of the reference. Thus, *Jingu* as applied by the Examiner does not appear to teach or suggest the claimed non-engaging portion.

Notwithstanding the above and solely for the purpose of expediting prosecution, Applicants have amended **independent claims 1 and 21** to include, if appropriate, limitations of claims 9, 31

and claims 26, 29, 31, respectively. The independent claims now recite, among other things, that the fixing tape is folded along the outermost lateral edge of the respective side flap and is temporarily fixed to said side flap through the hook member. As best seen in FIG. 1 of *Jingu*, when the tape 21 is folded along the outermost lateral edge of the respective side flap, the entire hook member 22 will fall within the region 29, and therefore, the state shown in FIG. 1 of *Jingu* does not teach or suggest the claimed non-engaging portion.

Further, the independent claims also recite an opening in the attaching portion for which the Examiner's reliance on *Tanzer* is improper for numerous reasons advanced in previous Amendments.

For any of the reasons detailed above independent claims 1 and 21 are believed patentable over the art as applied in the Office Action.

The **dependent claims** are considered patentable at least for the reason(s) advanced with respect to the respective independent claim(s).

New **independent claim 32** is patentable over the art as applied in the Office Action for at least the reason detailed previously with respect to the "opening" feature.

The **new dependent claims** are considered patentable at least for the reason(s) advanced with respect to independent claim 32.

**Conclusion**

Each of the Examiner's rejections has been overcome. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

**LOWE HAUPTMAN HAM & BERNER, LLP**

Benjamin J. Hauptman  
Registration No. 29,310

USPTO Customer No. 22429  
1700 Diagonal Road, Suite 310  
Alexandria, VA 22314  
(703) 684-1111  
(703) 518-5499 Facsimile  
Date: December 5, 2008  
BJH/KL/bjs